

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HEALTH

In the Matter of Lakewood Health Systems
– Survey Date: February 10, 2005

RECOMMENDED DECISION

The above matter was the subject of an informal dispute resolution meeting conducted by Administrative Law Judge Raymond R. Krause on Tuesday, May 24, 2005, beginning at 9:30 a.m., at the Office of Administrative Hearings. The meeting concluded on that date.

Marci Martinson, Unit Supervisor, Division of Facility and Provider Compliance (“DPFC”), 1645 Energy Park Drive, Suite 300, St. Paul, MN 55108-2970 represented DFPC. Susan M. Schaffer, Esq., Orbovich & Gartner, Chartered, 408 St. Peter St. Suite 417, St. Paul, MN 55102-1187, represented Lakewood Health System. Also attending the meeting were Mary Cahill for the Department of Health, and Dan Donohue and Barb Donohue from Lakewood Health System.

NOTICE

Under Minn. Stat. § 144A.10, subd.16(d)(6), this recommended decision is not binding on the Commissioner of Health. Under Department of Health Information Bulletin 04-07, the Commissioner must mail a final decision to the facility indicating whether or not the Commissioner accepts or rejects the recommended decision of the Administrative Law Judge within 10 calendar days of receipt of this recommended decision.

Based upon the exhibits submitted and the arguments made and for the reasons set out in the Memorandum that follows, the Administrative Law Judge makes the following:

RECOMMENDED DECISION

That the citation with regard to F-tag 241 be sustained.

Dated this 26th day of May, 2005.

s/Raymond R. Krause

RAYMOND R. KRAUSE

Administrative Law Judge

Reported: Tape-recorded
(One Tape, No Transcript Prepared)

MEMORANDUM

On December 17, 2004, the Minnesota Department of Health ("MDH") completed a standard survey of Lakewood Health System. MDH issued a Statement of Deficiencies, known as CMS Form 2567, describing three deficiencies, identified by "F-tags" related to violation of the requirements of participation.

Lakewood disagreed with certain of the findings but directed its efforts toward compliance measures and was prepared for a revisit survey. MDH surveyors completed the revisit survey on February 9 and 10, 2005 and determined that Lakewood was in substantial compliance with the three original F-tags cited. MDH however, also determined that an additional deficiency would be issued.

In this request for Informal Dispute Resolution, Lakewood challenges the February 10, 2005 revisit survey findings under Minn. Stat. § 144A.10, subd.16 and submits the F-tag for determination.

Tag F241 – Quality of Life

According to the Guidance to Surveyors in the State Operations Manual,^[1] the intention of the quality of life requirements is to specify the facility's responsibilities toward creating and sustaining an environment that humanizes and individualizes each resident. Compliance decisions are driven by the quality of life each resident experiences.

"Dignity" means that in their interactions with residents, staff carry out activities which assist the resident to maintain and enhance his or her self-esteem and self-worth. The Guidance to Surveyors indicates that surveyors need to determine whether or not staff show respect for residents, pay attention to the residents as individuals, and respond in a timely manner to the residents' requests for assistance.

During observations conducted on February 9, 2005 at the supper meal in the main dining room and on February 10, 2005 at the breakfast meal in the main dining room, facility staff removed soiled resident dishes and glasses from the table while other residents were still eating. The food and debris left on the dishes was scraped into an open container on a cart that was positioned next to the residents who were still eating. The liquid from the glasses was also poured into an open container on the cart while the cart was positioned next to the residents who were still eating. The containers into which the food scraps and liquids are placed sit on the top shelf of the cart. The interior of the container, and therefore the garbage in the container, is not visible to a seated resident.

During the observation of the breakfast meal on February 10, 2005 a linen hamper was pushed next to the residents seated at the table while the table was being cleared. This linen hamper is for collecting used bibs and clothing protectors.

During the course of the two meals, 10 residents were noted to still be eating while the dirty dishes were scraped next to them. Many of the residents were cognitively impaired and could not be interviewed by the surveyors. One resident, resident #31, was cognitively intact and was interviewed. That resident expressed displeasure at the table clearing practice. No other resident commented on the practice at the time of the visit or at any time in the past although this practice has been in place for many years.

Scope and severity determination

The MDH determined the severity to be a Level 2. This level is defined as “noncompliance that results in no more than minimal physical, mental, and/or psychosocial discomfort to the resident and/or has the potential (not yet realized) to compromise the resident’s ability to maintain and/or reach his/her highest practicable physical, mental and/or psychosocial well-being...”^[2]

In this case, a resident who was subject to the cited practice, was unhappy about it and did complain, when asked, to the surveyor. Other residents may or may not have been disturbed by the practice but are too cognitively impaired to be interviewed. Still other non-cognitively impaired residents had multiple opportunities to voice objections to the practice but did not do so. The complaint by the one resident does, however, represent an example of noncompliance as to that resident. While Lakewood had no previous indication that this practice was disturbing to residents, scraping dishes at the table is inherently a distasteful practice in most settings where it can be avoided. Lakewood has now changed its practice to avoid the issue by taking dishes from the table and scraping waste elsewhere. This ALJ agrees that the noncompliance results in no more than minimal psychosocial discomfort.

With regard to scope, MDH determined that this was a pattern of noncompliance. A pattern is defined as when “more than a very limited number of residents are affected, and/or ...*the same resident(s) have been affected by repeated occurrences of the same deficient practice.*”^[3]

In this case it is not evident that multiple residents have found the cited practice to be objectionable. In fact, the evidence tends to indicate that the residents either do not care or prefer to have the dishes cleared quickly even if it is in this manner. However, the fact is that one resident found that the practice caused quality of life issues and that resident was subjected to the practice on multiple occasions. This falls within the definition of a “pattern”.

The record supports a finding of Level 2 severity and a scope finding of “pattern”.

The scope and severity rating is therefore appropriate and the ALJ does not recommend a change.

R.R.K.

^[1] U.S. Dept. of Health and Human Services, Centers for Medicare and Medicaid Services, State Operations Manual, 2005

^[2] Id. Appendix P pp. 71-73

^[3] Id. emphasis added